

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ERIC DRAKE	§ § §
Plaintiff,	§ § §
VS.	§ Case No. 4:12CV264 § §
PENSKE TRUCK LEASING CO., LP, FREIGHLINER, LLC., DAIMLER TRUCKS NORTH AMERICA, LLC, AND GALLAGHER BASSETT SERVICES, INC.	§ § § § § §
Defendants.	§ §

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 21, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants Daimler Trucks North America, LLC's Motion to Dismiss (Dkt. 5) be GRANTED as to Plaintiff's claims of strict product liability, negligence, DTPA, and intentional infliction of emotional distress against Defendant DTNA and DENIED as to Plaintiff's claims of breach of implied warranties against Defendant DTNA, that Defendant Penske Truck Leasing, Co., LP's Rule 12(b)(6) Motion to Dismiss (Dkt. 22) be GRANTED as to Plaintiff's claims of strict products liability, DTPA, violations of the Texas

Insurance Code, and intentional infliction of emotional distress against Defendant Penske and DENIED as to Plaintiff's claims of breach of implied warranties against Defendant Penske, that Defendant Gallagher Bassett Services, Inc.'s Rule 12(b)(6) Motion to Dismiss (Dkt. 21) be GRANTED as to all of Plaintiff's claims against Defendant Gallagher, and that Plaintiff's negligence claims against Penske and breach of implied warranties claims against Defendants Penske and DTNA remain at this time.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court. Therefore, Defendants Daimler Trucks North America, LLC's Motion to Dismiss (Dkt. 5) is GRANTED as to Plaintiff's claims of strict product liability, negligence, DTPA, and intentional infliction of emotional distress against Defendant DTNA and DENIED as to Plaintiff's claims of breach of implied warranties against Defendant DTNA. Defendant Penske Truck Leasing, Co., LP's Rule 12(b)(6) Motion to Dismiss (Dkt. 22) is GRANTED as to Plaintiff's claims of strict products liability, DTPA, violations of the Texas Insurance Code, and intentional infliction of emotional distress against Defendant Penske and DENIED as to Plaintiff's claims of breach of implied warranties against Defendant Penske. Defendant Gallagher Bassett Services, Inc.'s Rule 12(b)(6) Motion to Dismiss (Dkt. 21) is GRANTED as to all of Plaintiff's claims against Defendant Gallagher.

Plaintiff's negligence claims against Penske and breach of implied warranties claims against Defendants Penske and DTNA remain at this time.

IT IS SO ORDERED.

SIGNED this the 28th day of March, 2013.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE